

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	Chapter 11
)	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,)	Case No. 18-23538 (RDD)
)	
)	(Jointly Administered)
Debtors. ¹)	

**STIPULATION AND ORDER CONCERNING
DEBTORS' CONTINUING USE OF CASH COLLATERAL**

This Stipulation and Order Concerning Debtors' Continuing Use of Cash Collateral (the "Stipulation"), by and among Sears Holdings Corporation ("Sears") and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the "Debtors") and Wilmington Trust, National Association, as Prepetition Second Lien 2018 Indenture Trustee² and as Prepetition Second Lien Collateral Agent ("Movant"), Cyrus Capital Partners, L.P. ("Cyrus") and ESL Investments, Inc. ("ESL"; together with Cyrus, "Joiners"; the Joiners, together with the Movant and the Debtors, the "Parties") date as of this [7th] day of June, 2019.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Final Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* (the "Final DIP Order") [Dkt. No. 955].

RECITALS

WHEREAS on November 30, 2018, the Final DIP Order was entered;

WHEREAS on April 4, 2019 (the “Motion Date”), the Movant filed the *Motion of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent to Prohibit or Condition Debtors’ Continued Use of Collateral, Including Cash Collateral* (the “Motion”) [Dkt. No. 3050];

WHEREAS on April 11, 2019, Cyrus filed the *Joinder of Cyrus Capital Partners, L.P. to Motion of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent to Prohibit or Condition Debtors’ Continued Use of Collateral, Including Cash Collateral* (the “Cyrus Joinder”) [Dkt. No. 3142];

WHEREAS on April 11, 2019, ESL filed the *Joinder of ESL Investments, Inc. to Motion of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent to Prohibit or Condition Debtors’ Continued Use of Collateral, Including Cash Collateral* (the “ESL Joinder”) [Dkt. No. 3134];

WHEREAS on April 15, 2019 the Debtors filed the *Debtors’ Objection to Motion of Wilmington Trust, National Association as Indenture Trustee and Collateral Agent to Prohibit or Condition Debtors’ Continued Use of Collateral, Including Cash Collateral* (the “Objection”) [Dkt. No. 3198] in response to the Motion;

WHEREAS on April 17, 2019, the Movant filed the *Reply in Further Support of the Motion of Wilmington Trust, National Association, as Indenture Trustee and Collateral Agent to Prohibit or Condition Debtors’ Continued Use of Collateral, Including Cash Collateral* (the “Reply”) [Dkt. No. 3267];

WHEREAS a hearing on the Motion was held before the United States Bankruptcy Court for the Southern District of New York (the “Court”) on April 18, 2019, and adjourned *sine die*; and

WHEREAS given the uncertainties, burden, expense, and delay of litigation over the Motion, the Parties have determined that it is in their respective best interests to address the Motion on the terms and conditions set forth herein;

NOW THEREFORE, based upon the foregoing recitals, which are incorporated as though fully set forth herein, it is hereby Stipulated and Agreed, and upon Court approval it shall be ordered, as follows:

1. The Hearing on the Motion is adjourned pending a determination by the Court, or agreement among the Parties approved by the Court, in either case by final order after notice and a hearing (the “Determination”) with respect to (i) the value of the Prepetition Second Lien Adequate Protection Liens, if any and (ii) the amount of the Prepetition Second Lien Facilities Adequate Protection Claims, if any.

2. Anything in decretal paragraphs 18(d) and 23 of, or otherwise in, the Final DIP Order to the contrary notwithstanding, the Prepetition Second Lien Collateral Agent, on behalf of itself and the other Prepetition Second Lien Credit Parties, shall be granted a Prepetition Second Lien Adequate Protection Lien solely to the extent of the Interim Second Lien Diminution in Value (as defined below) on the Winddown Account if, and only if, the Court determines any Second Lien Diminution in Value has occurred between the Motion Date and the date of the Determination (the “Interim Second Lien Diminution in Value”).

3. For the period from the Motion Date through August 3, 2019 (the “Extended Budget Period”), the “Weekly Cash Flow Budget Base Case” provided by the Debtors to the Movant on June 6, 2019, and subsequently provided to Cyrus and ESL, a copy of which is

annexed hereto as **Exhibit A**, shall constitute the Approved Budget for such Extended Budget Period; provided, that the Approved budget for such Extended Budget Period shall only be for reporting purposes.

4. The DIP ABL Loan Parties shall comply with the reporting and information requirements of decretal paragraph 19(e)(ii) of the Final DIP Order, including the provision, on a weekly basis, of Rolling Budgets, Weekly Flash Reporting Packages and Budget Variance Reports.

5. Except as otherwise set forth herein, the Final DIP Order shall remain in full force and effect.

6. The rights of all Parties with respect to the Motion, the Joinders thereto, the Objection and the Reply are expressly reserved.

7. This Stipulation contains the entire understanding of the Parties with respect to the matters set forth herein and supersedes any prior oral or written agreements or understandings among them concerning its subject matter.

8. This Stipulation may be amended or modified only by a written instrument signed by all of the Parties hereto, or by further order of the Bankruptcy Court.

9. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of New York, except to the extent that the Bankruptcy Code, 11 U.S.C. § 101 et. seq. applies, without regard to principles of conflicts of law that would require the application of laws of another jurisdiction.

10. This Stipulation may be executed in one or more counterparts, including facsimile or electronic counterparts, all of which together shall constitute one and the same instrument.

11. Each of the undersigned counsel represents that it has the authority to execute and deliver this Stipulation on behalf of its respective client.

12. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation.

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of the date first above written.

Dated: New York, New York
June [7], 2019

SEYFARTH SHAW LLP

WEIL, GOTSHAL & MANGES LLP

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SO ORDERED, this 18th day of June, 2019,
there being no objections to the Debtors'
motion, by notice of presentment dated June 7,
2019, for approval hereof:

/s/ Robert D. Drain
Hon. Robert D. Drain
United States Bankruptcy Judge

EXHIBIT A